

REMARKS

Applicant has canceled claims 1-9, 15, 19, 25-29, 31, and 37. Applicant has added new claims 43-45. Applicant has amended several claims to help render moot the objections to the specification and claims and to help render moot the rejections of the claims. Applicant has also amended several claims, for example, claims 10 and 16-18, and has added new claims 43-45, in view of the Declaration under Rule 37 CFR 1.132 of inventor Imants Deme that was filed on July 11, 2008.

The Commissioner is hereby authorized to charge any required claims fees to Shell Oil Company, Deposit Account No. 19-1800.

Specification

Claim 31 has been objected to as indicated in the Office Action at page 2. The specification, regarding claims 25 and 37, has been objected to as indicated in the Office Action at page 2. Applicant respectfully traverses the objections. Reconsideration and withdrawal of the objections are respectfully requested in view of the amendment and remarks.

Applicant suggests that the objection to claim 31 has been rendered moot by Applicant's cancellation of claim 31. Applicant also suggests that the objection to the specification regarding claims 25 and 37 has been rendered moot by Applicant's cancellation of claims 25 and 37.

Claim rejections under 35 U.S.C. 112

Claims 1-5 and 36 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as indicated in the Office Action at pages 2-3. Applicant respectfully traverses the rejections. Reconsideration and withdrawal of the rejections are respectfully requested in view of the amendment and remarks.

Applicant suggests that the 35 U.S.C. 112 rejection of claims 1-5 and 36 as indicated in the Office Action at pages 2-3 has been rendered moot by Applicant's cancellation of claims 1-5 and amendment of claim 36 to depend from claim 10.

Claim rejections under 35 U.S.C. 103(a)

Claims 1, 3-5, 7-9 and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Etnyre (US 4,756,763) in view of Gaw (US 3,960,585).

Claim 2 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Etnyre (US 4,756,763) in view of Gaw (US 3,960,585) and in further view of Kopvillem et al. (US 3,738,853).

Claims 10-19, 30 and 35 have been rejected under 35 U.S.C. 103(a) as being unpatentable over AU 9715194 in view of Etnyre (US 4,756,763) and in further view of Gaw (US 3,960,585).

Claims 20-24 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Gaw (US 3,960,585) in view of Etnyre (US 4,756,763).

Claims 25-29 and 37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Etnyre (US 4,756,763) in view of Gaw (US 3,960,585).

Applicant respectfully traverses the rejections. Reconsideration and withdrawal of the rejections are respectfully requested in view of the amendment and remarks.

Applicant suggests that the 35 U.S.C. 103(a) rejections of claims 1-5, 7-9, 15, 19, 25-29, and 37 as indicated in the Office Action at pages 3-6 and as indicated as being detailed out in the previous Office Action have been rendered moot by Applicant's cancellation of claims 1-5, 7-9, 15, 19, 25-29, and 37.

Applicant suggests that the 35 U.S.C. 103(a) rejection of claim 36 as indicated in the Office Action at page 3 has been rendered moot by Applicant's amendment of claim 36 to depend from claim 10.

The prior art relied upon by the Office Action, AU 9715194 A, US 4,756,763 to Etnyre, US 3,960,585 to Gaw, and US 3,738,853 to Kopvillem et al., has been previously summarized in Applicant's Amendment filed on July 11, 2008. Applicant incorporates such summary herein at this point by reference and reiterates such summary. Applicant also incorporates the Argument section from Applicant's Amendment filed on July 11, 2008 herein at this point by reference and reiterates such Argument section.

As indicated previously in the Argument section, the cited prior art references clearly fail to disclose high sulfur content compositions that contain a significant concentration of a

hydrogen sulfide suppressant. And, in fact, the prior art references actually teach away from such compositions or their use in the formation of materials containing asphalt and sulfur used with aggregate materials that can be formed or used as a paving material. There is absolutely no suggestion in the prior art teachings that a sulfur pellet with a hydrogen sulfide suppressant may be formed at a separate location than which an asphalt composition is formed and where the sulfur pellet is added.

Also, no combination of the references teaches a composition that is predominantly or close to entirely all sulfur and which further has a concentration of hydrogen sulfide suppressant. Independent claims 20 and 38 use the partially closed transitional language “consisting essentially of” to make it clear that the sulfur compositions or pellets exclude the substantial presence of bitumen or aggregate, or both. With this limitation, it is absolutely clear that the claimed compositions are patentably distinguishable over the prior art.

Applicant has also amended several claims, for example, claims 10 and 16-18, and has added new claims 43-45, in view of the Declaration under Rule 37 CFR 1.132 of inventor Imants Deme that was filed on July 11, 2008.

CONCLUSION

Applicant respectfully requests reconsideration and withdrawal of the Office Action objections and rejections. Applicant further respectfully requests entry and consideration of the above amendments and remarks to advance the above-identified application to allowance.

Respectfully submitted,

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